

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

BP Chemicals, Inc.  
Lima, Ohio

NOTICE OF VIOLATION  
EPA-5-99-OH-19

Proceedings Pursuant to the  
Section 113 of the Clean Air Act,  
42 U.S.C. § 7413

STATUTORY AUTHORITY

This Notice of Violation is issued pursuant to Section 113(a) (1) of the Clean Air Act ("Act"), 42 U.S.C. § 7413(a) (1). You are hereby notified that the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), by authority duly delegated to the undersigned, finds BP Chemicals Inc. ("BP Chemicals"), Lima, Ohio, to be in violation of Part C of the Act and 40 C.F.R. § 52.21. Specifically, BP Chemicals is in violation of Section 165(a) of the Act and 40 C.F.R. § 52.21 for failing to obtain an effective Prevention of Significant Deterioration ("PSD") permit prior to beginning actual construction of a major emitting facility.

STATUTORY AND REGULATORY AUTHORITY

1. Section 110 of the Act, 42 U.S.C. § 7410, requires States to adopt, and submit to the U.S. EPA for approval, State Implementation Plans ("SIPs") providing for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards ("NAAQS") promulgated by U.S. EPA pursuant to Section 109 of the Act, 42 U.S.C. § 7409. U.S. EPA has promulgated NAAQS for, among other pollutants, volatile organic compounds.
2. Part C of the Act, 42 U.S.C. §§ 7470-7491, requires the Administrator to promulgate regulations to prevent the significant deterioration of air quality in areas designated as attainment or unclassifiable in accordance with Section 107(d) of the Act, 42 U.S.C. § 7407(d). In accordance with the Act, the Administrator promulgated regulations at 40 C.F.R. § 51.166 setting forth SIP approval requirements for the prevention of significant deterioration of air quality.
3. Section 161 of the Act, 42 U.S.C. § 7471, and 40 C.F.R. § 51.166(a) (1) require the States to submit SIPs containing emission limitations and other measures necessary to prevent the significant deterioration of air

quality. Pursuant to Section 110(a) of the Act, 42 U.S.C. § 7410(a), the Administrator determined the Ohio SIP did not satisfy the measures required to ensure the prevention of significant deterioration of air quality. As a result, the Administrator disapproved the PSD portion of the Ohio SIP, 40 C.F.R. § 52.1884(a).

4. In accordance with Section 110(c) of the Act, 42 U.S.C. § 7410(c) and 40 C.F.R. § 52.21(a), the Administrator incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) [PSD Regulations] as part of the Ohio SIP, 40 C.F.R. § 52.1884(b).
5. "Major stationary source" is defined at 40 C.F.R. § 52.21(b) (1) (i) as, among other things, any chemical process plant that emits or has the potential to emit, 100 tons per year of any air pollutant subject to regulation under the act.
6. "Major modification" is defined at 40 C.F.R. § 52.21(b) (2) (i) as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act."
7. "Construction" is defined at 40 C.F.R. § 52.21(b) (8) as "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions."
8. "Begin actual construction" is defined at 40 C.F.R. § 52.21(b) (11) as "initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those onsite activities other than preparatory activities which mark the initiation of the change."
9. "Significant" is defined at 40 C.F.R. § 52.21(b) (23) (i) as "net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates" including but not limited to: "100 tons per year (TPY) CO, 40 TPY of NO<sub>x</sub>, 40 TPY of SO<sub>2</sub>, 25 TPY of Particulate Matter and 40 TPY of volatile organic compounds for Ozone."
10. 40 C.F.R. § 52.21(i) states "no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements."

11. Section 165(a) of the Act states, *inter alia*, that no major emitting facility may be constructed or modified unless a permit has been issued in accordance with requirements of Part C of the Act.
12. The issuance and effective dates for a PSD permit are regulated under 40 C.F.R. § 124.15.
13. 40 C.F.R. § 124.15(a) states "after the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision..." Pursuant to this requirement, the Ohio Environmental Protection Agency ("OEPA") issued a final permit decision on November 10, 1998.
14. 40 C.F.R. § 124.15(b) states "a final permit decision shall become effective thirty (30) days after the service of notice of the decision ..." Pursuant to this regulation, BP's permit was effective on December 11, 1998.
15. 40 C.F.R. § 52.21(r) provides, *inter alia*, that any owner or operator of a source subject to the PSD regulations who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.
16. 40 C.F.R. § 52.23 provides, *inter alia*, that failure to comply with any provisions of 40 C.F.R. Part 52, or with any approved regulatory provision of a SIP or with any permit condition, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the SIP, subjects the person or governmental entity so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Act.

#### **FACTUAL BACKGROUND**

17. BP Chemicals is located at Ft. Amanda Road, P.O. Box 628, Lima, Ohio in Allen County.
18. BP Chemicals operates a chemical manufacturing facility.
19. Allen County is an area presently classified as attainment or unclassifiable for all criteria pollutants. 40 C.F.R. Subpart B, § 81.336.

20. On November 10, 1998, OEPA issued a PSD permit to BP Chemicals for the Butanediol ("BDO") unit. The PSD permit was not effective until after the 30 day appeal period (December 11, 1998), as required by 40 CFR § 124.15.
21. On November 20, 1998, U.S. EPA and BP Chemicals met to discuss the activities BP Chemicals intended to undertake during the 30 day appeal period. During the meeting, U.S. EPA put BP Chemical on notice that the installation of the cooling water line would be a violation of the PSD regulations and the other activities (placement of a thin mud mat and site preparation of form and rebar work for the foundation of the reactor and pipe rack) discussed during the conference required further review and discussion with U.S. EPA headquarters.
22. On November 23, 1998, BP Chemicals initiated and completed the mud mat construction.
23. On November 30, 1998, BP Chemicals initiated the form and rebar work for the foundation for the reactor and pipe rack. The work was completed on December 10, 1998.
24. On December 11, 1998, BP Chemicals notified U.S. EPA that there were no appeals for their PSD permit and that they are starting construction.

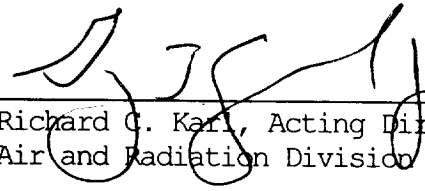
#### **FINDINGS OF VIOLATION**

25. BP Chemicals emitted over 100 tons of VOCs before November 1998. Thus, BP Chemicals is a major stationary source as defined at 40 C.F.R. § 52.21(b)(1)(I), and, therefore, is subject to the PSD regulations.
26. In violation of Section 165(a)(1) of the Act and 40 C.F.R. § 52.21(i), BP Chemicals began actual construction on the BDO Unit without first obtaining a construction permit issued in accordance with the PSD regulations. BP began actual construction by undertaking placement of a thin mud mat and site preparation of form and rebar work for the foundation of the reactor and pipe rack prior to December 11, 1998, the effective date of the above mentioned PSD permit.

**NOTICE OF VIOLATION**

The Administrator of the U.S. EPA, by authority duly delegated to the undersigned, notifies the State of Ohio and BP Chemicals, Inc. that the facility described above is in violation of Section 165(a) of the Act, and 40 C.F.R. § 52.21, as set forth in this Notice of Violation.

5/13/77  
Date

  
Richard G. Karl, Acting Director  
Air and Radiation Division

CERTIFICATE OF MAILING

Re: Notice of Violation at BP Chemicals, Inc., Lima, Ohio

I, Loretta Shaffer, do hereby certify that a Notice of Violation Pursuant to the Clean Air Act was sent by Certified Mail, Return Receipt Requested, to:

James W. Walpole, Plant Manager  
BP Chemicals, Inc.  
Ft. Amanda Road  
P.O. Box 628  
Lima, Ohio 45802-0628

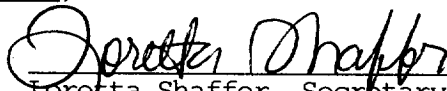
I, Loretta Shaffer, certify that a copy of the Notice of Violation Pursuant to the Clean Air Act was sent by first class mail to:

Robert Hodanbosi, Chief  
Division of Air Pollution Control  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049

and

Gerald Rich, APC Supervisor  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

on the 17th day of MAY, 1999.

  
Loretta Shaffer, Secretary  
AECAB (MN/OH)

Z 411 898 442  
Certified Mail Article Number